

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

RUBEN VERGARA
1163 E. Badillo Street, Apt. B
Covina, CA 91724

Registered Nurse License No. 734269

Respondent

Case No. 2012-564

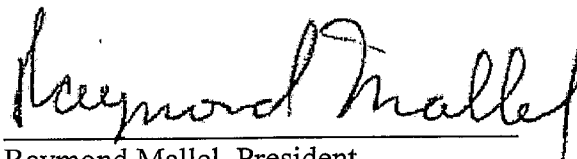
OAH No. 2012040927

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order for Public Reprimand is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **April 4, 2013.**

IT IS SO ORDERED **March 5, 2013.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 CRISTINA FELIX
Deputy Attorney General
4 State Bar No. 195663
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5 Los Angeles, CA 90013
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **RUBEN VERGARA**
4967 Manzanita Street
14 Montclair, California 91763

15 **Registered Nurse License No. 734269**

16 Respondent.

Case No. 2012-564

OAH No. 2012040927

17 **STIPULATED SETTLEMENT AND**
18 **DISCIPLINARY ORDER FOR PUBLIC**
19 **REPROVAL**

[Bus. & Prof. Code § 495]

20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 PARTIES

23 1. LOUISE R. BAILEY, M.ED., RN (Complainant) is the Executive Officer of the
24 Board of Registered Nursing. She brought this action solely in her official capacity and is
25 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
26 Cristina Felix, Deputy Attorney General.

27 2. Respondent Ruben Vergara is represented in this proceeding by attorney Manuel
28 Lopez, Esq., whose address is:

1186 W. Sunset Boulevard
Los Angeles, CA 90012

3. On or about August 11, 2008, the Board of Registered Nursing issued Registered Nurse License No. 734269 to Ruben Vergara (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2012-564 and will expire on April 30, 2012; unless renewed.

JURISDICTION

4. Accusation No. 2012-564 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 22, 2012. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2012-564 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2012-564. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order for Public Reproval.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 supplemented, or otherwise changed except by a writing executed by an authorized representative
2 of each of the parties.

3 13. In consideration of the foregoing admissions and stipulations, the parties agree that
4 the Board may, without further notice or formal proceeding, issue and enter the following
5 Disciplinary Order:

6 DISCIPLINARY ORDER

7 IT IS HEREBY ORDERED that Registered Nurse License No. 734269 issued to
8 Respondent Ruben Vergara (Respondent) shall, by way of letter from the Board's Executive
9 Officer, be publicly reprovved. The letter shall be in the same form as the letter attached as
10 Exhibit B to this stipulation.

11 IT IS FURTHER ORDERED that within one (1) year from the effective date of this
12 decision, Respondent shall pay \$5,647.50 to the Board for its costs associated with the
13 investigation and enforcement of this matter. Respondent shall be permitted to pay these costs in
14 a payment plan approved by the Board. If Respondent fails to pay the Board costs as ordered,
15 Respondent shall not be allowed to renew his Registered Nurse License until Respondent pays
16 costs in full.

17 ACCEPTANCE

18 I have carefully read the above Stipulated Settlement and Disciplinary Order for Public
19 Reproval and have fully discussed it with my attorney, Manuel Lopez, Esq. I understand the
20 stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated
21 Settlement and Disciplinary Order for Public Reproval voluntarily, knowingly, and intelligently,
22 and agree to be bound by the Decision and Order of the Board of Registered Nursing.

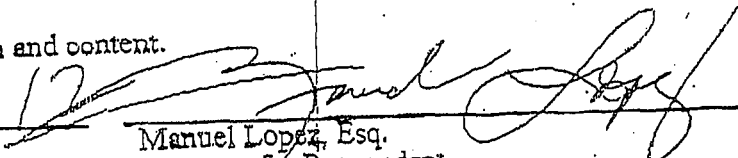
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24 DATED: 10/17/12


25 RUBEN VERGARA
26 Respondent
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1 I have read and fully discussed with Respondent Ruben Vergara the terms and conditions
2 and other matters contained in the above Stipulated Settlement and Disciplinary Order for Public
3 Reproval. I approve its form and content.

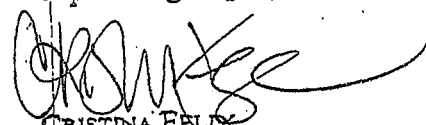
4 DATED: 10-17-12 
5 Manuel Lopez, Esq.
6 Attorney for Respondent

ENDORSEMENT

7 The foregoing Stipulated Settlement and Disciplinary Order for Public Reproval is hereby
8 respectfully submitted for consideration by the Board of Registered Nursing of the Department of
9 Consumer Affairs.

10 Dated: 10/17/2012

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General


CRISTINA FELIX
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 2012-564

1 KAMALA D. HARRIS
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3 CRISTINA FELIX
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2012-564

13 **RUBEN VERGARA**
4967 Manzanita Street
Montclair, California 91763

ACCUSATION

14 Registered Nurse License No. 734269

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
21 of Consumer Affairs (the Board).

22 2. On or about August 11, 2008, the Board issued Registered Nurse License No. 734269
23 to Ruben Vergara (Respondent). The Registered Nurse License was in full force and effect at all
24 times relevant to the charges brought herein and will expire on April 30, 2014, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct...."

6. Section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license."

7. Section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

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8. Health and Safety Code section 11550, subdivision (a) states, in pertinent part:

“No person shall use, or be under the influence of any controlled substance which is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in Schedule III, IV, or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances.”

COST RECOVERY

9. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

10. CONTROLLED SUBSTANCE

a. "Marijuana," is a schedule I controlled substance as designated by Health and Safety Code section 11054, subdivision (d)(13) and is categorized a dangerous drug pursuant to section 4022.

b. "Vicodin," is a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and is categorized a dangerous drugs according to 4022.

FIRST CAUSE FOR DISCIPLINE

(Use/Under the Influence of a Controlled Substance)

11. Respondent is subject to disciplinary action under section 2761, subdivision (a), as defined in section 2762, subdivision (b), in that Respondent used/and or was under the influence of a controlled substance, in violation of Health and Safety Code section 11550, subdivision (a). On or about August 8, 2010, during a traffic stop, by the Los Angeles County Sheriff's Department, Respondent was contacted. While speaking to Respondent the officer detected a strong odor of burnt marijuana. He was observed to have bloodshot, droopy eyelids, and avoided eye contact with the officer. When asked when was the last time he ingested marijuana,

Respondent stated, "Earlier in the day, but I take Vicodin on a daily basis." When asked if he knew he was not supposed to be driving when he ingest marijuana or takes Vicodin, Respondent stated, "Yah I know, but I had to go somewhere," in violation of Vehicle Code section 23152, subdivision (a) [driving under the influence of alcohol or drugs]. During a search of Respondent's vehicle, the officer found several unused syringes in the vehicle's glove compartment. When asked why he possessed the syringes, Respondent stated, "I take them from work so I can inject my brother who has allergies," in violation of Business and Professions Code section 4140 [possession of hypodermic needle and/or syringe].

SECOND CAUSE FOR DISCIPLINE

(Illegal Possession of a Dangerous Device)

12. Respondent is subject to disciplinary action under section 2761, subdivision (a), as defined in section 2762, subdivision (a), in that Respondent was found to be in illegal possession of a dangerous device. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 12, as though set forth fully.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Registered Nurse License No. 734269, issued to Ruben Vergara,
2. Ordering Ruben Vergara to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: March 22, 2012

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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Exhibit B

Letter of Public Reproval in Case No. 2012-564

Board of Registered Nursing
P O Box 944210, Sacramento, CA 94244-2100
P (916) 322-3350 | www.rn.ca.gov
Louise R. Bailey, M.ED., RN, Executive Officer



March 5, 2013

Ruben Vergara
1163 E. Badillo Street, Apt. B
Covina, CA 91724

RE: LETTER OF PUBLIC REPROVAL
In the Matter of the Accusation Against:
Ruben Vergara, Registered Nurse License No. 734269

Dear Mr. Vergara:

On March 22, 2012, the Board of Registered Nursing, Department of Consumer Affairs, State of California, filed an Accusation against your Registered Nurse License. The Accusation alleged that you engaged in unprofessional conduct under Business and Professions Code section 2761, subdivision (a) and section 2762, subdivisions (a) and (b). The Accusation also alleged that on August 8, 2010, during a traffic stop, you failed a field sobriety test and admitted to officers to smoking Marijuana earlier in the day and taking Vicodin. You were also found to be in possession of a dangerous device, namely unused syringes. Following your arrest, you were ultimately charged with an infraction of disturbing the peace.

Taking into consideration that you have been licensed since 2008, that you had a prescription for Vicodin, that you submitted to a urine analysis test which was negative for Marijuana, that this is the first disciplinary action since you received your license, that this appears to be an isolated incident and that there are other mitigating circumstances in this case that support the determination that you are safe to practice Registered Nursing, the Board has decided that the charges warrant a public reproof.

Accordingly, in resolution of this matter under the authority provided under Business and Professions Code section 495, the Board of Registered Nursing, Department of Consumer Affairs issues this letter of public reproof.

Sincerely,

Louise R. Bailey M.Ed., RN
LOUISE R. BAILEY, M.ED., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California